

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 03-0348V

Filed: 24 April 2009

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ERIC SHAW FINET, a minor,
by his parents and natural guardians
SCOTT FINET AND ANGELA FINET,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

* * * * *

UNPUBLISHED¹

Clifford Shoemaker, Esq., Shoemaker & Associates, Vienna, Virginia, for Petitioner;
Glenn MacLeod, Esq., United States Department of Justice, Washington, D.C. for Respondent.

**AMENDED UNPUBLISHED DECISION,
STRIKING PREVIOUS (UNAMENDED) DECISION**

ABELL, Special Master.

On 27 March 2009, the parties filed a joint stipulation addressing the alleged vaccine-related injuries of Eric Shaw Finet, which the Court accepts as reasonable, just and proper, with minor emendations, (in brackets), and which states as follows:

1. On behalf of their son, Eric Shaw Finet ("Eric"), Petitioners filed a Petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 *et seq.* (the "Vaccine Program"). The Petition seeks compensation for injuries allegedly related to Eric's receipt of the Haemophilus Influenza type b vaccine ("Hib vaccine"), which vaccine is contained in the Vaccine Injury Table (the "Table"). 42 C.F.R. § 100.3(a)(IX).

¹ Petitioners are reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b), a petitioner has 14 days from the date of this ruling within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" may be made available to the public per the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

2. Eric received his third Hib vaccination on 18 July 2001.

3. The vaccine were administered within the United States.

4. Petitioners allege that Eric sustained the first symptom or manifestation of the onset of bacterial meningitis on 27 July 2001, which was caused by the Hib vaccine. They further allege that as a result of the bacterial meningitis, Eric sustained bilateral profound sensorineural hearing loss and developmental delays related to speech, language and motor skills.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of Eric as a result of his condition.

6. On 18 November 2005, [the Undersigned] determined that Petitioners are entitled to vaccine compensation as a result of his finding that Eric's hearing loss was, more likely than not, caused by a Hib vaccine-related bacterial meningitis.

7. The parties agree that a decision should be entered awarding the compensation described in paragraph 8 of this [Decision].

8. As soon as practicable after an entry of judgment reflecting [this Decision], and after Petitioners have filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services [shall] issue the following vaccine compensation payments:

a. A lump sum of **\$500,000.00** in the form of a check **payable to Petitioners** as guardians/conservators of Eric's estate;

b. A sum of **\$300,000.00** to purchase the annuity contract described in paragraph 10 below, **paid to the life insurance company** from which the annuity will be purchased (the "Life Insurance Company").

The above amounts represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;

b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;

c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;

d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company at a cost of \$300,000.00 for the benefit of Eric Shaw Finet, pursuant to which the Life Insurance Company will agree to make payments periodically to Petitioners as follows:

Beginning on the first anniversary of the date of judgment, \$64,543.61 payable annually for five (5) years guaranteed.

The purchase price of the annuity shall not exceed \$300,000.00. The above payments represent an estimate of the annuity stream that could be purchased for \$300,000.00. In the event that the cost of the annuity payments set forth above varies from \$300,000.00 due to market rate fluctuations on the date the annuity is purchased, the annual payment described above shall be adjusted downward or upward accordingly to ensure that the total cost of the annuity will not be greater than or less than \$300,000.00. Petitioners will receive the annuity payments from the Life Insurance Company for the guaranteed periods indicated above. Should Eric predecease the exhaustion of payments described above, any remaining payments shall be made payable to the Estate of Eric Shaw Finet. The personal representative of the Estate of Eric Shaw Finet shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Eric's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this [Decision]. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. As soon as practicable after the entry of judgment on entitlement in this case, and after Petitioners have filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the [Undersigned] to award reasonable attorneys' fees and costs incurred in proceeding upon this Petition.

13. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 of this [Decision] will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

14. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs and past unreimbursable expenses, the money provided pursuant

to this [Decision] either immediately or as part of the annuity contract, will be used solely for the benefit of Eric as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

15. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as Guardians/Conservators of the Estate of Eric Shaw Finet under the laws of the Commonwealth of Virginia. No payments pursuant to this [Decision] shall be made until Petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators or Eric's estate. If Petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Eric Shaw Finet at the time a payment pursuant to this [Decision] is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of Eric Shaw Finet upon submission of written documentation of such appointment to the Secretary.

16. In return for the payments described in paragraphs 8 and 12, Petitioners, in their individual capacities and as legal representatives of Eric, and on behalf of themselves, Eric and his heirs, executors, administrators, successors or assigns, do forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of Eric, resulting from, or alleged to have resulted from, the Hib vaccine administered on 18 July 2001, as alleged by Petitioners in the Petition for vaccine compensation filed on 14 February 2003, in the United States Court of Federal Claims as Case No. 03-0348V.

17. If Eric should die prior to receiving the payments described in paragraph 8, [the parties'] agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

18. [If the undersigned Special Master does not issue a Decision in complete conformity with the terms of the Stipulation between the parties, or in the event the Court of Federal Claims does not enter judgment in conformity with a decision that is in complete conformity with the terms of the Stipulation between the parties,] then the parties' settlement and their Stipulation shall be null and void at the discretion of either party.

19. This [Decision] expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 12 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

20. All rights and obligations of Petitioners hereunder shall apply equally to Petitioners' successors and assigns as legal representatives of Eric Shaw Finet.

I find this conclusion reasonable, just and proper, and adopt these provisions as the Decision of this Court in awarding damages. Therefore, in the absence of the filing of a motion for review, filed pursuant to Vaccine Rule 23 within 30 days of this date, **the clerk shall forthwith enter judgment** in accordance herewith.

Also, the Court hereby **STRIKES** the previous (unamended) Decision from the Record.

IT IS SO ORDERED.

Richard B. Abell
Special Master